

**NOMINATION OF H. LAWRENCE GARRETT III, TO
BE GENERAL COUNSEL OF THE DEPARTMENT OF
DEFENSE**

HEARING
BEFORE THE
COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON THE

NOMINATION OF

H. LAWRENCE GARRETT III, TO BE GENERAL COUNSEL OF THE
DEPARTMENT OF DEFENSE

JANUARY 28, 1986

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NOMINATION OF H. LAWRENCE GARRETT III, TO BE GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

TUESDAY, JANUARY 28, 1986

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The committee met, in open session, pursuant to notice, at 9 a.m., in room SDG-50, Dirksen Senate Office Building, Senator Barry Goldwater (chairman) presiding.

Present: Senators Goldwater, Thurmond, Warner, East, Nunn, Exon, and Dixon.

Staff present: James F. McGovern, staff director and chief counsel; Patrick A. Tucker, general counsel; Jeffrey H. Smith, minority counsel; John J. Hamre, George K. Johnson, Jr., and Carl M. Smith, professional staff members; Colleen M. Getz and Russell C. Miller, research assistants; Marie Chaillet and Kathleen L. McGuire, staff assistants.

Also present: Gerald J. Smith, assistant to Senator Goldwater; Romie L. Brownlee, assistant to Senator Warner; Henry D. Sokolski, assistant to Senator Quayle; Mark J. Albrecht, assistant to Senator Wilson; Jeff B. Subko, assistant to Senator Exon; Charles C. Smith, assistant to Senator Dixon; and Milton D. Beach, assistant to Senator Glenn.

OPENING STATEMENT BY SENATOR BARRY GOLDWATER, CHAIRMAN

Chairman GOLDWATER. The hour of 9 o'clock having arrived, the committee will come to order.

[The nomination reference and biographical sketch of Mr. Garrett follow:]

AS IN EXECUTIVE SESSION,
SENATE OF THE UNITED STATES,
December 10, 1985.

Ordered. That the following nomination be referred to the Committee on Armed Services:

H. Lawrence Garrett, III, of Virginia, to be General Counsel of the Department of Defense, vice Chapman B. Cox.

BIOGRAPHICAL SKETCH OF HENRY LAWRENCE GARRETT III

H. Lawrence Garrett, III is currently an Associate Counsel to the President of the United States.

Prior to this appointment, he was appointed in July 1982 to be the Regional Director of the Seattle Regional Office of the U.S. Merit System Protection Board. He

was responsible for supervising the adjudication of all appeals filed by Federal employees working in the states of Alaska, Idaho, Washington and Oregon.

Prior to his appointment as Regional Director, he was Executive Assistant to the President and Chief Operating Officer of the U.S. Synthetic Fuels Corporation, primarily responsible for the coordination of policy initiatives between the President/Chief Operating Officer and Chairman of the Board and all corporate vice presidents.

He enlisted in the U.S. Navy in 1961 and subsequently became qualified in submarines. Mr. Garrett was commissioned upon completion of Naval flight training, serving as a Naval Flight Officer until transferring to the Judge Advocate General's Corps, where he rose to the rank of Commander. In 1981, he was detailed to the White House as Assistant Counsel in the Office of Counsel to the President.

He was a supervising and administrative law attorney while serving as Head of the Standards of Conduct Branch within the Office of Civil Law in the Navy's Washington, D.C. Office of the Judge Advocate General. During that time, he was detailed to the Office of Government Ethics to assist in developing the Federal regulations pertaining to the Ethics in Government Act of 1978. He also served, from 1974 to 1978, as Force Judge Advocate/Legal Advisor attached to the staff of the Commander, Submarine Force, U.S. Pacific Fleet, Pearl Harbor, Hawaii.

Mr. Garrett attended the University of Miami, Coral Gables, Florida, where he studied Industrial Engineering. He received a B.S. degree in Business Management from the University of Florida, in Pensacola, and received his J.D. degree from the University of San Diego School of Law, San Diego, California, graduating cum laude.

A member of the California and District of Columbia Bars, he is licensed to practice before the United States Supreme Court, the Supreme Court of California, the District of Columbia Court of Appeals, U.S. Court of Military Appeals, and the U.S. District Court for the Southern District of California.

Born in Washington, DC., he was raised in Miami, Florida, and now lives with his wife and two children in Oakton, Virginia.

Chairman GOLDWATER. The committee meets this morning, to consider the nomination of Henry Lawrence Garrett III, to be the general counsel of the Department of Defense and to consider pending military nominations.

Mr. Garrett, the nominee for general counsel of the Department of Defense, brings with him extensive legal and military experience. He is presently the associate counsel to the President, having served in that position since July 1983.

Prior to that employment, Mr. Garrett served as the Seattle Regional Director of the Merit Systems Protection Board and immediately before that as Executive Assistant to the President and Chief Executive Officer of the U.S. Synthetic Fuel Corporation.

Prior to these civilian positions, Mr. Garrett served for 20 years on active duty with the U.S. Navy. His Navy experience is varied, having served for almost 3 years as an enlisted man, qualified in submarines, then as a naval flight officer following completion of naval flight training and subsequently following completion of law school as a Judge Advocate.

From 1974 to 1978 Mr. Garrett served as the force Judge Advocate and legal adviser attached to the staff of the commander, Submarine Force, U.S. Pacific Fleet, Pearl Harbor.

He then served in the Office of the Judge Advocate General of the Navy in Washington. He was detailed from that position to the Office of Government Ethics in January 1979.

In the last assignment before his retirement from the Navy in November 1981, he served in the Office of Counsel to the President.

I might say, Mr. Garrett, when you finish this assignment, you might want to look at the Air Force.

Mr. GARRETT. Yes, sir.

Chairman GOLDWATER. Mr. Garrett studied industrial engineering at the University of Miami, Coral Gables, FL, received his bachelor of science and a B.S. degree in business management from the University of West Florida, in Pensacola, and a J.D. degree from the University of San Diego School of Law in San Diego, CA.

He now resides in Washington, D.C. He is accompanied this morning by his wife Marilyn, and son, Henry, the fourth. I will ask both of these people to please stand up so that we can welcome you.

Welcome to this delightful occasion.

He has one daughter, Juliana, who is attending school at Old Dominion University in Virginia.

The staff of the committee, Department of Defense and Office of Government Ethics have reviewed Mr. Garrett's financial affairs and have found no matters which would present a conflict of interest with the position for which he is nominated.

We welcome you here this morning, Mr. Garrett. We look forward to your statement.

I would like to ask Senator Nunn if he has anything he would like to say.

Senator NUNN. Thank you very much, Mr. Chairman.

I join in welcoming Mr. Larry Garrett and his family this morning.

I believe that the general counsel's position is one of the most important in the Department of Defense and I am pleased that the President has nominated someone who brings to that job the unique qualifications of Mr. Garrett.

He has served on submarines and as a Navy pilot prior to attending law school. Since becoming a lawyer and transferring to the Judge Advocate General's corps, he has served in a variety of important positions including assistant counsel in the Office of the Counsel of the President.

Most importantly, Mr. Chairman, he served in a variety of positions requiring him to review issues relating to ethics and standards of conduct. My fellow Georgian, Dean Rusk, said that the legal adviser's office at the Department of State, which is the counterpart office in State to the one Mr. Garrett will head at the Department of Defense, was the "conscience of the Department of State."

I would urge Mr. Garrett to view the Office of the General Counsel of the Department of Defense in the same light because I think that is true.

Mr. Chairman, in the coming months and years we will face many important legal issues with which Mr. Garrett will have to deal. These include reorganization of the Department of Defense, manpower and military justice matters, ethics and conflict of interest questions and the polygraph. So, your platter will be full.

All indications I have are that you are well equipped to handle that. So, we welcome you here this morning.

Chairman GOLDWATER. Senator Thurmond, do you have any comment you would like to make relative to this appointment?

Senator THURMOND. Mr. Chairman, I have none except I am in favor of it.

Chairman GOLDWATER. That is a good long statement from you.

The prepared statement of Senator Dixon will be inserted in the hearing record at this point.

[The prepared statement of Senator Dixon follows:]

PREPARED STATEMENT BY SENATOR ALAN J. DIXON

Mr. Chairman, I am pleased to be here this morning as the committee considers Mr. H. Lawrence Garrett for the position of General Counsel of the Department of Defense.

I understand that Mr. Garrett has had previous military experience in the Navy. Mr. Garrett has served on the White House staff advising the President on conflict of interest issues.

I look forward to hearing from Mr. Garrett on his views as the nominee for this important position especially as they pertain to military procurement issues.

Thank you, Mr. Chairman.

Chairman GOLDWATER. I have just a few questions, Mr. Garrett. Senator WARNER. I would like to interrupt.

I came in to introduce Mr. Garrett. The only thing you did not say was the fact that he was from Virginia.

Chairman GOLDWATER. I said his daughter was going to school in Virginia.

Senator WARNER. By inference then.

I would like to submit my statement for the record and join others in welcoming this nominee this morning.

Thank you very much, Mr. Chairman.

[The prepared statement of Senator Warner follows:]

PREPARED STATEMENT OF SENATOR JOHN WARNER

Mr. Chairman, it is indeed a pleasure for me to introduce to the committee Henry Lawrence Garrett, III for confirmation as General Counsel to the Department of Defense.

Mr. Garrett was born in Washington, DC and grew up in Miami, Florida, where he received a B.S. degree in Business management from the University of West Florida.

He received his J.D. degree from the University of San Diego School of Law where he graduated cum laude.

He enlisted in the Navy in 1961 and subsequently became qualified in submarines.

Larry was later commissioned upon completion of Naval flight training and rose to the rank of commander.

Mr. Garrett's legal experience is extensive.

He was a supervising and administrative law attorney while serving as Head of the Standards of Conduct Branch within the Office of Civil Law in the Navy's Office of the Judge Advocate General.

He also served, from 1974 to 1978, as Force Judge Advocate/Legal advisor attached to the staff of the commander, Submarine Force, U.S. Pacific Fleet, Pearl Harbor, Hawaii.

Mr. Garrett has worked effectively as the Executive Assistant to the President and Chief Operating Officer of the U.S. Synthetic Fuels Corporation and the Regional Director of the Seattle Regional Office of the U.S. Merit Systems Protection Board.

Since 1981 Mr. Garrett has served in the Office of Counsel to the President, most recently as Associate Counsel to the President.

This most recent experience in addition to his previous assignments has kept him well informed on the many and complex issues concerning the Department of Defense.

We are pleased to have Marilyn Garrett here with us today and wish that their two children, Lawrence and Juliana, could have also joined us.

Mr. Chairman, Mr. Garrett has demonstrated his loyalty, integrity, and dedication to public service throughout his career.

I believe he possesses the experience and skill to be an effective General Counsel to the Defense Department, and I strongly endorse his nomination.

Chairman GOLDWATER. Mr. Garrett, you will find that most appointees are from Virginia. There has been a vacancy on the U.S. Court of Military Appeals for a number of months.

If confirmed, do we have your commitment to do all you can to have this vacancy filled immediately?

**STATEMENT OF H. LAWRENCE GARRETT III, NOMINEE FOR
GENERAL COUNSEL, DEPARTMENT OF DEFENSE**

Mr. GARRETT. You have my commitment, sir. I can tell you, Mr. Chairman, that a nominee is in process at this time. He has not yet been cleared. However, the President is working toward filling that very vital position.

Chairman GOLDWATER. Thank you very much.

If confirmed, do we have your commitment to respond to requests to appear and testify to any duly constituted committee of the Senate?

Mr. GARRETT. You do, sir.

Chairman GOLDWATER. I will defer my questions and ask you to make any statement that you care to make.

Mr. GARRETT. Thank you, Mr. Chairman and members of the committee.

I do not have a prepared statement. However, I would like to make a few remarks. I, of course, am deeply honored to be the President's nominee to become the general counsel of the Department of Defense.

As the chairman noted, I served in the U.S. Navy for 20 years, 9 of them as Judge Advocate or attorney in the Judge Advocate General Corps. I know firsthand, I think, the importance of the Department's mission and I am fully committed to the President's and Secretary Weinberger's program to maintain and strengthen the Nation's defense.

I am extremely proud to join the Department as a civilian at this time of great challenge and continuing responsibility and I look forward to joining the Secretary's management team.

Should I be confirmed, I pledge to you that I will do my utmost to maintain the very high standards of excellence and integrity established by my immediate predecessors, Mr. Cox and Mr. Taft, and to be the conscience of the Department.

Finally, I would like to say again that I am grateful for the opportunity to serve and undertake this task and am humbled by the President's nomination.

Thank you.

Chairman GOLDWATER. Thank you.

Sam, do you have any questions?

Senator NUNN. I will not get into great detail, but do you have any views about the polygraph? Have you had any experience in that vein because that situation is going to be something we have to deal with in the next several months?

Mr. GARRETT. I really have not had the opportunity, Senator, to look at the issue. I know it is there. I know the Congress has authorized the Secretary to conduct, I believe, 3,500 polygraph examinations. I think that is in the Defense Authorization Act for 1986.

I certainly, as I think General Stilwell mentioned in his testimony before the Congress, would submit myself to a polygraph. I think before they put me in a position of responsibility where I can do harm, they should know that I am who I say I am and I am not working for the other side.

I think it is a viable tool to a degree so long as the constitutional rights of those who are subjected to them are protected.

Senator NUNN. I have no further questions.

Chairman GOLDWATER. John.

Senator WARNER. Thank you, Mr. Chairman.

Mr. Chairman, having some familiarity with the building and this office to which this nominee I hope will be confirmed, I would be remiss if I did not bring up the fact that the deputy will be Mr. Leonard Niederlehner, a man who has served under many general counsels and has been acting general counsel, himself, on many, many occasions.

Mr. Garrett and I discussed his future working relationship with Mr. Niederlehner and the fact that Mr. Niederlehner will help Mr. Garrett sort of get underway in this position.

Then you will be the boss, you will run that outfit.

Mr. GARRETT. Yes, sir.

Senator NUNN. I think, Mr. Chairman, that this is a nominee that has about as diverse a background as I have ever seen in this position. I think that will augur well in your assuming these duties at a very critical time.

I wish you success.

Mr. GARRETT. Thank you, Senator.

Chairman GOLDWATER. Just as a matter of curiosity, what did they have you flying in the Navy?

Mr. GARRETT. I started out in P-5M's, the old flying boat, and moved to P-3's before I started law school in 1969.

Chairman GOLDWATER. It was a good airplane.

If confirmed, Mr. Garrett, as general counsel of the Department of Defense, you will be asked for your views on a great number of matters.

On what issues do you feel that your experience will permit you to have the greatest impact?

Mr. GARRETT. Mr. Chairman, I think immediately I will be able to bring my experience to bear in the area of standards of conduct and the procurement-related issues that arise from the intensified efforts relating to the elimination of fraud, waste and abuse.

There are a great many conflicts of interest issues there. I think, given my experience in the White House Counsel's Office and in the Office of Government Ethics before that, that I can bring that experience to bear in a fruitful way.

I think the other primary area of experience that I can bring to bear would be that which I had as a participant in the military justice system for approximately 10 years.

Chairman GOLDWATER. I will ask the Senator from Illinois if he has any questions?

Senator DIXON. Thank you, Mr. Chairman.

Mr. Garrett, you seem to be eminently qualified for the post to which you have been recommended. We have had discussions, both in the committee and in the Acquisition Subcommittee, on which I

serve, and have spent a good deal of time in this last conference between the two Houses, on the whole question of the revolving door policy and conflicts of interest by employees of the Department of Defense who ultimately gain employment with defense contractors doing business with the Government.

I think it is a very delicate area. Frankly, I think it is important that we do not overlegislate in that field, thus discouraging highly qualified people from continuing in employment with the Government and at the same time recognize that there are public relations problems of the greatest importance to the Government and the interests of all of us who serve on this committee in respect to how these people conduct themselves.

Are you prepared at some time in your important post as general counsel of the Department of Defense to give your thoughts and opinions and those around you to the Armed Services Committee, both here on the Senate side and in the House, so that we can use your talents in that regard to inform us about what we should do about these problems in the future?

Mr. GARRETT. I will certainly prepare myself at the appropriate time to come before the committee at the committee's call to give my views on that issue. I agree with you, Senator, it is a very delicate issue.

Senator DIXON. It seems to me the House had very strong feelings on this subject. I think we spent more time on this subject than on some of the other important issues concerning matters of importance to our national defense.

I do not denigrate this issue. As a lawyer, myself, I see this is an important issue, but I also think it is one that is quite delicate and we have to respond to in a way that we do not pass laws that ordinary decent people cannot comply with.

I would appreciate very much if you would give that a lot of thought because in the time I have been on the committee, which has not been very long, as you can see from this end of the table, it has been a continuing source of substantial discussion.

Mr. GARRETT. Yes, sir. This issue was taken up before the Congress in 1978 when the Ethics in Government Act was passed and amended provisions of 18 U.S.C., section 207, which dealt with the revolving door.

I know there is pending legislation in the House. I believe there is legislation already passed applicable to certain individuals within the Department.

Senator DIXON. That is right.

Mr. GARRETT. We need to look at it. As I understand it, my office will be charged with recommending regulations concerning this.

I will be more than happy to come back and give you my views.

Senator DIXON. I appreciate that. I suggest to the Chair that sometime it would be a matter of interest at least to some of us who have been exposed to that in the committee and subcommittee we serve on to have the benefit of counsel on that matter later this year.

Chairman GOLDWATER. That is a good suggestion. We will follow through on that.

Welcome back, Jim.

Senator EXON. Mr. Chairman, thank you.

Chairman GOLDWATER. Have you any questions?

Senator EXON. I have visited with the nominee and I have no questions. I applaud the appointment and strongly support it.

Mr. GARRETT. Thank you, sir.

Chairman GOLDWATER. We do not have a quorum present which is not unusual.

Without objection, we will pass favorably on your nomination. We will poll the rest of the committee by 5 p.m. this evening.

I think it is reasonably safe for you to assume that you have this job. I want to congratulate you and urge you to do your very best. If we can ever help you, do not hesitate to call.

Mr. GARRETT. Thank you, Mr. Chairman.

Chairman GOLDWATER. Thank you.

[Whereupon, at 9:17 a.m., the committee proceeded to other business.]

[The nomination of H. Lawrence Garrett III was reported to the Senate by Senator Dixon on January 28, 1986, with the recommendation that the nomination be confirmed. The nomination was confirmed by the Senate on February 4, 1986.]